

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600**

[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

**Case No. A-6294**

**PETITION OF KAREN S. REINKE**  
(Hearing held June 24, 2009)

**OPINION OF THE BOARD**  
(Effective date of Opinion, July 17, 2009)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(a). The petitioner proposes the construction of a two-story addition that requires a variance of 9.74 feet as it is within 15.26 feet of the front lot line. The required front lot line setback (Richmond Avenue) is twenty-five (25) feet.

David Reinke, the petitioner's husband, appeared with the petitioner at the public hearing.

The subject property is Lot P44, Block 66A, Blair Takoma Subdivision, located at 701 Richmond Avenue, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 00990432).

Decision of the Board: Requested variance **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose the construction of a two-story addition.
2. The petitioner testified that the subject property is located at the intersection of Richmond and Takoma Avenues and that the lot has an extraordinarily large right-of-way at that intersection. The petitioner testified that in discussions with the Department of Permitting Services (DPS), it was thought that a 15-foot setback would be required from the curve of the intersection for Richmond and Takoma Avenues. The petitioner testified that upon review of her building permit application, DPS determined the required setback for the intersection was 25 feet and not 15 feet. The petitioner testified that the setback for the street does not follow the property line, but that it is wedged

shaped at the intersection of the two roads. See Exhibit Nos. 4(a) [large site plan], 8(b) [proposed site plan], and 9 [location plan].

3. The petitioner testified that none of the neighboring properties have the subject property's very large right-of-way and that the right-of-way confuses the issue of what are the actual dimensions of the lot's street frontage. The petitioner testified that the impact of the large right-of-way combined with the location of the house are circumstances peculiar to the subject property. The petitioner testified that the proposed construction is designed to be aligned with the front of the house and that the design would permit the addition to be connected to the existing openings of the house. The lot size of the subject property is 8,726 square feet. See Exhibit Nos. 10 [zoning vicinity map] and 15 [DPS Code Interpretation Policy].

### **FINDINGS OF THE BOARD**

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that while the large right-of-way is an unusual circumstance, the right-of-way does not constitute a "condition peculiar to a specific parcel of property" that is of such severity that the Board may grant the requested variance. The right-of-way simply defines the border of the property. The appropriateness of a variance must be decided on the basis of the lot lines of the property as depicted in the record plat. The fact that the adjacent property is a public right-of-way does not distinguish this property from any other in the County that fronts on a street. The Board finds that the subject property has no exceptional topographical or other conditions that are peculiar to the lot and that the lot exceeds the minimum lot size for the zone.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of 9.74 feet from the required twenty-five (25) foot front lot line setback for the construction of a two-story addition is denied.

The Board adopted the following Resolution:

Board Chair Catherine G. Titus was necessarily absent and did not participate in this Resolution. On a motion by Carolyn J. Shawaker, seconded by Stanley B. Boyd, with David K. Perdue, in agreement, and with Walter S. Booth, in opposition, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

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David K. Perdue  
Vice Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 17th day of July, 2009.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have the right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.